

§ 107.860

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Cost of Money ceiling from paragraph (d) of this section as the discount rate.

(3) If the result is zero or less, the Financing is within the Cost of Money ceiling; if it is greater than zero, the Financing exceeds the Cost of Money ceiling.

[61 FR 3189, Jan. 31, 1996, as amended at 63 FR 5867, Feb. 5, 1998; 64 FR 52646, Sept. 30, 1999; 65 FR 69432, Nov. 17, 2000]

§ 107.860 Financing fees and expense reimbursements a Licensee may receive from a Small Business.

You may collect Financing fees and receive expense reimbursements from a Small Business only as permitted under this § 107.860.

(a) *Application fee.* You may collect a nonrefundable application fee from a Small Business to review its Financing application. The application fee may be collected at the same time as the closing fee under paragraph (c) or (d) of this section, or earlier. The fee must be:

(1) No more than 1 percent of the amount of Financing requested (or, if two or more Licensees participate in the Financing, their combined application fees are no more than 1 percent of the total Financing requested); and

(2) Agreed to in writing by the Financing applicant.

(b) *SBA review of application fees.* For any fiscal year, if the number of application fees you collect is more than twice the number of Financings closed, SBA in its sole discretion may determine that you are engaged in activities not contemplated by the Act, in violation of § 107.500.

(c) *Closing fee—Loans.* You may charge a closing fee on a Loan if:

(1) The fee is no more than 2 percent of the Financing amount (or, if two or more Licensees participate in the Financing, their combined closing fees are no more than 2 percent of the total Financing amount); and

(2) You charge the fee no earlier than the date of the first disbursement.

(d) *Closing fee—Debt or Equity Financings.* You may charge a Closing Fee on a Debt Security or Equity Security Financing if:

(1) The fee is no more than 4 percent of the Financing amount (or, if two or more Licensees participate in the Fi-

nancing, their combined closing fees are no more than 4 percent of the total Financing amount); and

(2) You charge the fee no earlier than the date of the first disbursement.

(e) *Limitation on dual fees.* If another Licensee or an Associate of yours collects a transaction fee under § 107.900(e) in connection with your Financing of a Small Business, the sum of the transaction fee and your application and closing fees cannot exceed the maximum application and closing fees permitted under this § 107.860.

(f) *Expense reimbursements.* You may charge a Small Business for the reasonable out-of-pocket expenses, other than Management Expenses, that you incur to process its Financing application. If SBA determines that any of your reimbursed expenses are unreasonable or are Management Expenses, SBA will require you to include such amounts in the Cost of Money or refund them to the Small Business.

(g) *Breakup fee.* If a Small Business accepts your Commitment and then fails to close the Financing because it has accepted funds from another source, you may charge a “breakup fee” equal to the closing fee that you would have been permitted to charge under paragraph (c) or (d) of this section.

[61 FR 3189, Jan. 31, 1996; 61 FR 41496, Aug. 9, 1996]

§ 107.865 Control of a Small Business by a Licensee.

(a) *In general.* You, or you and your Associates (in the latter case, the “Investor Group”), may exercise Control over a Small Business for purposes connected to your investment, through ownership of voting securities, management agreements, voting trusts, majority representation on the board of directors, or otherwise. The period of such Control will be limited to the seventh anniversary of the date on which such Control was initially acquired, or any earlier date specified by the terms of any investment agreement.

(b) *Presumption of control.* Control over a Small Business based on ownership of voting securities will be presumed to exist whenever you or the Investor Group own or control, directly or indirectly: